

Dear Mr. Murray:

You have asked three questions:

1. What fee should be exacted for issuance of a remittitur?
2. Must a copy of the court's opinion—when the judgment or order of the trial court is reversed—be attached to the remittitur?
3. What charge should be made for such copy, if a copy is necessary?

I.

Section 9753, Revised Codes of Montana, 1935, requires the clerk of the supreme court to certify a judgment rendered upon appeal to the clerk with whom the judgment-roll is filed or the order appealed from is entered. Section 372, Revised Codes of Montana, 1935, as amended by Chapter 156, Laws of 1939 and Chapter 112, Laws of 1943, relates to the fees to be charged by the clerk of the supreme court for various official services; but no specific mention of a fee for issuance of a remittitur is made therein:

"He must collect in advance the following fees. For filing the transcript on appeal, in each civil case appealed to the supreme court, ten dollars (\$10.00) payable by the appellant, and five dollars (\$5.00) payable by the respondent, at the time of his appearance, in full for all services rendered in each case, up to the remittitur to the court below; for filing petition for any writ, ten dollars (\$10.00), in full for all services rendered in each cause; for certificate of admission as attorney and counselor, five dollars (\$5.00); for making transcripts, copies of papers on record, fifteen cents (15c) per folio; for comparing any document requiring a certificate, five cents (5c) per folio; for each certificate under seal, one dollar (\$1.00) . . ."

It is my opinion issuance of a remittitur falls within the last phrase above quoted—and a fee of one dollar is chargeable therefor by the clerk of the supreme court.

II.

Rule XXI of the Rules of the Supreme Court of the State of Montana, set forth in the introductory material at the front of Volume III of the Montana Reports, provides:

Opinion No. 93.

Offices and Officers—Clerk of the Supreme Court—Supreme Court—Fees—Remittitur.

- Held: 1. A fee of one dollar is chargeable by the clerk of the supreme court for issuance of a remittitur.
2. A copy of the court's opinion must accompany the remittitur when the judgment or order of the trial court is reversed or modified and the case remanded for further proceedings other than the entry of a final judgment or order terminating the proceedings in the trial court.
3. When such copy of the court's opinion is attached to the remittitur, no charge shall be made for such copy.

July 23, 1943.

Mr. Frank Murray
Clerk of the Supreme Court
State Capitol
Helena, Montana

"REMITTITUR, WHEN ISSUED

"1. Time for Issuance. Remittitur may, in cases where it is deemed proper, be ordered forthwith; otherwise the same shall be issued promptly upon expiration of time for filing petition for rehearing, or, if such petition is filed, then upon the denial thereof, unless a modification of the decision is made which permits a further petition for rehearing.

"2. Copy of Opinion to Accompany, When. A copy of the opinion must accompany the remittitur when the judgment or order of the trial court is reversed or modified and the case remanded for further proceedings other than the entry of a final judgment or order terminating the proceedings in the trial court."

The mandate of the court is clear and specific: A copy of the opinion must accompany the remittitur when the judgment or order of the trial court is reversed or modified and the case remanded for further proceedings other than the entry of a final judgment or order terminating the proceedings in the trial court.

III.

Although Section 372, Revised Codes of Montana, 1935, as amended, *supra*, provides a fee of fifteen cents (15c) per folio is to be charged by the clerk of the supreme court for making copies of papers or records, I am of the view that provision covers the case of an attorney or member of the public who requests of the clerk a copy of some paper or record in his office. Under the facts before us here with relation to the copy of an opinion accompanying a remittitur, the situation is quite different. The copy of the opinion accompanying the remittitur under certain circumstances, noted above, is at the specific mandate of the court. In preparing such copy and attaching it to the remittitur for mailing to the clerk of the court below, the clerk of the supreme court is performing a service required by the supreme court for which no charge is provided by law.

My opinion on the questions you have presented is:

1. A fee of one dollar is chargeable by the clerk of the supreme court for issuance of a remittitur.

2. A copy of the court's opinion must accompany the remittitur when the judgment or order of the trial court is reversed or modified and the case remanded for further proceedings other than the entry of a final judgment or order terminating the proceedings in the trial court.

3. When such copy of the court's opinion is required to be attached to the remittitur, no charge shall be made for such copy.

Sincerely yours,
R. V. BOTTOMLY
Attorney General